C.S. 2062 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

W.P. NO. :- 2062 /04(S.B.)

PETITIONERS

1. **ADMINISTRATOR,**
Lahidhi Multipurpose Higher Secondary School, Chirmiri, P.O.- Chirmiri, district-Korea (C.G.)

2. **Principal,**
Lahidhi Multipurpose Higher Secondary School, Chirmiri, P.O.- Chirmiri, district-Korea (C.G.)

VERSUS

RESPONDENTS

1. **SMT. VIDDYAVATI CHATURWEDI W/O**
Late Shri Roopnarayan Chaturwedi P.O-Chhota Bazar, Near Bangla Primary school, chirmiri, P.O..- Chirmiri, District-Korea (C.G.),

2. **CONTROLLING AUTHORITY,**
Under The Payment Of Gratuity Act Through –Labour Commissioner Officer Korba (C.G.)

P.R. No. 2032/04 Presented by Shri V.K. Pandey 14-7-04

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.2062/2004

Administrator,
Lahidhi Multipurpose Higher Secondary School
and another

Vs.

Smt. Vidyavati Chaturvedi and others

JUDGMENT

Post for 01.08.2005

Sd/-
Sunil Kumar Sinha
Judge

1-8-05

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.2062/2004

Administrator,
Lahidhi Multipurpose Higher Secondary School
and another

Vs.

Smt. Vidyavati Chaturvedi and others

Shri Vineet Kumar Pandey, counsel for the petitioners.

Shri Rajeev Shrivastava, counsel for respondent no.1.

JUDGMENT
(01.8.2005)

Sunil Kumar Sinha, J,

(1) A short but important question arises for consideration in this writ petition as to whether a principal of the aided non-government Educational Institution is an "employee" within the meaning of section 2(e) of the Payment of Gratuity Act 1972 (hereinafter referred to as "the Act") and the benefit of the Payment of Gratuity can be extended to him or not ?

(2) Petitioner No.1 is the Administrator and Petitioner No.2 is the Principal, Lahidhi Multipurpose Higher Secondary School, Chirimiri, Distt. Korea (C.G). This is a non-governmental aided higher secondary school. The case of the petitioners is that late Roopnarayan Chaturved was appointed in this institution on 20.7.1966. He died during service on 21.9.2001. His wife namely Smt. Vidyavati Chaturvedi, respondent no.1 herein, made an application for Payment of Gratuity before the management of the

institution but the same was dismissed. Thereafter, she moved to the Controlling Authority under the Payment of Gratuity Act and the said authority passed his order dated 31.1.2004 and awarded a sum of Rs.1,99,298/- as the amount of gratuity payable to respondent no.1. The contention of the petitioners is that since the deceased was a "teacher" in their institution, therefore, he is not an "employee" within the meaning of the aforesaid Act, as such, no benefit of payment of gratuity can be extended to his legal representative (respondent no.1.) and the application before the controlling authority was not maintainable. The controlling authority erred in law in exercising jurisdiction under section 4 of the aforesaid Act and the order passed by controlling authority should be quashed.

(3) Reply on behalf of respondent no.1 has been filed. It is contended by respondent no.1 that her husband was initially appointed as a teacher in the said institution in the year 1966 but he was promoted to the post of Principal by the management vide order dated 01.3.1989 and the aforesaid order of the management was approved and confirmed by the competent authority of the Government vide order dated 06.11.1989. Copies of these two orders have been placed on record as Annexures R-1/1 and R-1/2. It is contended by her that the principal of an aided non-government educational institution is an "employee" within the meaning of Section 2(e) of the Payment of Gratuity Act 1972 and he will be entitled for the benefits of gratuity under the law. By way of filing rejoinder the petitioners have contended that though the deceased was working as a Principal, but he himself had filed

an application dated 14.12.1996 before the President that he is resigning from the post of Principal and he can serve the institution as a teacher in English. They have submitted the copy of the resignation letter as Annexure P-3. They have also contended vide para 2 of the rejoinder that at the time of holding the post of Principal, the deceased was also taking 3 periods of English subject in different classes daily, therefore, the deceased was doing the work of a teacher also. They have annexed copy of the time-table as Annexure P-4. There is an endorsement in the aforesaid resignation letter dated 14.12.1996, "to be put before the Managing Committee". No documents in relation to the acceptance of this letter has been filed nor it has been pleaded that the resignation was accepted and the deceased after resignation from the post of Principal was working as a teacher in the said institution.

(4) So far as respondent no.1 is concerned, she placed her claim before the controlling authority as has been stated hereinabove, but the petitioners though caused their appearance did not file any written statement to the aforesaid claims made by respondent no.1. The controlling authority examined respondent no.1 who supported her contentions in her statement. One Shri P.S. Khedwarkar was examined for the management who stated that the Managing Committee of the institution has been dissolved and the new Managing Committee can only consider the case of respondent no.1.

(5) After analysis of the evidence and documents produced by both the parties, the controlling authority by the impugned order

dated 31.1.2004, came to the conclusion that the deceased namely Roopnarayan Chaturvedi was an "employee" of the said educational institution from 20.7.1966 to 21.9.2001 on the post of Lecturer and Principal, therefore, he was entitled for payment of gratuity and his wife shall be entitled to a sum of Rs.1,99,298/- as the amount of gratuity. It is this order of the controlling authority which is under challenge in this writ petition.

(6) I have heard learned counsel for the parties at length and have also perused the records filed alongwith the writ petition.

(7) After going through the writ petition, return, rejoinder and the impugned order of the controlling authority it would appear that the deceased was appointed as teacher in the year 1966 and thereafter he was promoted as Principal on 01.3.1989 under the provisions of ***The M.P. Ashaskiya Shikshan Sanstha (Schoolon Mein Karyarat Adhyapakaon Tatha Anya Karmachariyon Ki Padonnati) Niyam 1988***. His promotion was confirmed by the competent authority of the State vide an order issued by the Directorate of Public Education, M.P., Bhopal on 06.11.1989. Therefore, it is clear that the deceased was working on the post of Principal since 01.3.1989. Though a plea before this Court has been taken by the petitioners in rejoinder that the deceased Roopnarayan has tendered his resignation and had applied for serving the institution as a teacher in English on 14.12.1986, but nothing has been pleaded by the petitioners and no documents have been placed on record, either before this Court or before the controlling authority, to show that his resignation from the post of Principal was accepted and in fact he was working as a teacher in

the said institution. The petitioners have tried to show by filing the time-table that he was taking some classes of English in the institution but they have not shown that he was taking the classes in the capacity of a teacher only. On the contrary their pleading is that at the time of holding the post of Principal, the deceased was taking the classes of English also. To substantiate, a copy of the time-table has been annexed as annexure P-4. If we examine the contents of this document, it would appear that this is the time table of academic session 2001-2002, that means according to the pleadings of the petitioners vide para-2 of the rejoinder it would be their admission that the deceased was working as a Principal in the academic session 2001-2002 and alongwith the work of Principal, he was also taking English classes in the institution in the said academic session of 2001-2002. Admittedly, the deceased has died on 21.9.2001. Therefore, it can easily be inferred that according to the admissions of the petitioners in their rejoinder the deceased was working as a Principal at the time of his death.

(8) Referring to the provisions of Section 2(a) and 2(h) of ***The Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam, 1975.*** (hereinafter referred to as the Adhiniyam 1975"), learned counsel for the petitioners argues that the Principal shall be included within the meaning of a "Teacher" and the teachers have not been held to be the "employees" within the meaning of section 2 (e) of the Payment of Gratuity Act 1972 by the Apex Court in the matter of ***Ahmedabad Pvt. Primary Teachers Assn. -Vs- Administrative Officer and others*** ***(2004) 1 SCC 755***, therefore the deceased who being the Principal of the institution was covered

under the definition of the teacher and his wife shall not be entitled for Payment of Gratuity under the Act of 1972. I have considered the arguments advanced by learned counsel for the petitioners. Section 2(a) and 2(h) of the Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam, 1975 are quoted as under:

> **"2(a) "Teacher" includes the Head of a school;**
>
> **2(h) "Head of a School" means the principal academic officer, by whatever name called, of a recognized school"**

The word "employee" as defined in section **2(e) of The Payment of Gratuity Act 1972** reads as under:

> "2(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

(9) While dealing with the Matter of Ahmadabad Pvt. Primary Teachers' Assn. (supra) for their entitlement to the payment of gratuity, the Apex Court has held that "this Act 1972 is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retrial benefit like pension, provident fund etc. Gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received. For the wage-earning population, security of income, when the worker becomes old or

infirm, is of consequential importance. The provisions contained in the Act are in the nature of social security measures like employment insurance, provident fund and pension. The main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression "gratuity"itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retiral hardships and inconveniences."

(10) For determining as to whether the teachers were included within the meaning of employee under the aforesaid Act, the Apex Court took the aid of other statutes dealing with the same subject matter for consideration of provisions in this statute on the doctrine of "*pari materia*" and on a comparison of definition of "workman" in section 2 (s), Industrial Disputes Act 1947, and the definition of "employee" in section 2(i), Minimum Wages Act 1948, Section 2(13), Payment of Bonus act 1965 and section 2(f), Employees Provident Fund and Miscellaneous Provisions act 1952 held that even on a plain construction of the words and expressions used in the definition clause 2(e) of the Act, teachers who are mainly employed for imparting education are not entitled to be covered for extending gratuity benefits under the Act. The Apex Court held in this matter that the "teachers" do not answer

the description of "employees" who are "skilled", "semi-skilled" or "unskilled". These three words used in association with each other intend to convey that a person who is "unskilled" is one and who is not skilled and a person who is "semi-skilled" may be one who falls between the two categories meaning that he is neither fully skilled nor unskilled. The contention raised in the said matter that the teachers should be treated as included in the expression "unskilled" or "skilled" was not accepted by the Apex Court. It has been further held by the Apex Court that the teachers are also not employed in the "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held to be employed in the "managerial" or "administrative" capacity. Therefore, the Apex Court held that the teachers are clearly not intended to be covered by the definition of "employee".

(11) It is in light of the above decision that learned counsel for the petitioners submits that since the deceased was also a teacher as the word "teacher" used in the aforesaid Adhiniyam of 1975 includes the Head of the School which has been defined to mean "Principal", therefore, the Principal shall also be included in the definition of teacher and as per the enunciation of the Apex Court in case of Ahmedabad Pvt.Primary Teachers Assn. (supra) the principal will also not be entitled for gratuity. The arguments advanced by learned counsel for the petitioners is misconceived. The definition of the teacher in the said Adhiniyam of 1975 is restricted for the purposes of that Adhiniyam only. This definition

of "teacher" may include the Principal therein, but it does not mean that a person who is working as a Principal and included in the definition of a teacher for the purposes of this particular Act 1975 shall not be deemed to be an employee within the meaning of The Payment of Gratuity Act 1972. ***The definitions of certain words and expressions used elsewhere in the body of the statute are commonly found in the definition clause of the Statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply. A definition section may borrow definition from an earlier act and the definitions so borrowed may not necessarily be in the definition section but may be in some other provision of the earlier Act. A definition borrowed by incorporation or reference may be some times found in the rules made under the referred statute. When a word is defined to 'mean' such and such, the definition is prima facie restrictive and exhaustive. Whereas, where the word defined is declared to 'include' such and such, the definition is prima facie extensive (Please see principles of Statutory Interpretation by Justice G.P.Singh, 6th Edition 1996, Pg.124, 125 & 126)***. Therefore, the definition of the word 'teacher' used in the Adhiniyam of 1975, which includes the Headmaster of the School means the 'principal academic officer' is an extensive definition so as to include the 'principal' in it, but if we examine the definition of employee mentioned in the Payment of Gratuity Act 1972, it would appear that this definition is prima facie

restrictive and exhaustive. It starts with the words "employee means any person" and then it expresses many categories of employees with a further expression of "whether or not such person is employed in a "managerial" or "administrative" capacity. In the said situation, the words used in the definition of "employee" in the Act 1972 is to be given a restrictive meaning and, therefore, the meaning of word "employee" in various sections of the Act will be the meaning which has been given in the definition clause alone and the meaning and expression from other enactments cannot be borrowed to bring or to oust a particular person from the definition of the "employee" given in this Act.

(12) The Apex Court while dealing the above matter has particularly held about the teachers that even if all the words used in the definition clause of the Act 1972 are read disjunctively or in any other manner "trained" or "untrained" teachers do not plainly answer any of the descriptions of the nature of various employees given in the definition clause. It has been held that "trained" or "untrained" teachers are not "skilled", "semi-skilled" or "unskilled", manual, supervisory, technical or clerical employees. It isfurther held that they are also not employed in "managerial" or "administrative" capacity. Occasionally even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity, therefore, finally the Apex Court held that the teachers are clearly not intended to be covered by the definition of "employee".

(13) If we examine and analyse the case of the Principal on the basis of the above enunciations and principles of law, it would appear that a Principal is a head of the institution and his service character is different than the service character of a teacher. Though the principal may not be said to be engaged in skilled, semi-skilled or unskilled, manual or technical or clerical work, he is always engaged in supervisory work in the "managerial" or administrative" capacity. One of the examples is that the Head of the Institution has been defined as the Enquiry Officer under Rule 7 of ***The M.P. Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karramchariyonko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983*** in case of a departmental enquiry of an employee of the said institution. The case may be, like the present one, that the Principal is occasionally doing the job of teaching but since his main work is of supervisory nature and the character of work is not only imparting of education but also is of managerial and administrative, it indicates that he is an employee within the meaning of section 2(e) of the Payment of Gratuity Act and his case is distinguishable from the case of a teacher.

(14) According to the principles of statutory interpretation referred to above, since for finding out the meaning of the word employed in various sections of the Act the meaning to be ordinarily given to it is that given in the definition clause, therefore, even if the principal is included in the definition of teacher in other enactments and the teachers have been excluded from the definition of the employees as per the enunciation of the

Apex Court in case of Ahmedabad Pvt. Primary Teachers Assn.(Supra), the principal would not be held to be a teacher for the purpose of the present Act 1972 and he shall be deemed to be an employee for the purpose of this Act. Therefore, I conclude that-

> "the "principal" of non-government aided educational institution though is a "teacher" within the meaning of Section 2(a) and 2(h) of The Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam 1975 but he is also an "employee" within the definition of section 2(e) of the Payment of Gratuity Act 1972."

(15) In light of the aforesaid discussion, I find no merit in the petition. The petition is dismissed. If the amount of gratuity has not been paid till date, it shall be paid within a period of one month from today. Since the respondent no.1 is a widow of the deceased employee and the Act of 1972 is piece of social welfare legislation and the gratuity is a kind of retrial benefit like pension, provident fund etc., I deem it proper to incorporate an interest clause in case of default of payment. I hereby direct that if the amount of gratuity is not paid within a period of one month from today then in that case it shall carry interest at the rate of 6% per annum from the date of order passed by the controlling authority till the date of its realization.

No costs.

Sd/-
Sunil Kumar Sinha
Judge

01.08.2005

/Rao/